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FILED

SEP 30 2013

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

10 Attorneys for Plaintiff Douglas Roberts

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN JOSE DIVISION**

14 DOUGLAS ROBERTS, AN INDIVIDUAL;

15 Plaintiff,

16 vs.

17 TRIMAC TRANSPORTATION SERVICES
18 (WESTERN), INC., A DELAWARE
19 CORPORATION; ,

20 Defendant.

Case No.: 5:12-cv-05302-HRL

COURT RULING RE
OBJECTIONS TO DECLARATION OF
DAN O'CONNOR IN SUPPORT OF
PLAINTIFF'S REPLY TO MOTION OF
PARTIAL SUMMARY JUDGMENT

(RE: DOCKET No. 35-1)

21 PLAINTIFF DOUGLAS ROBERTS objects to the following statements from the
22 Declaration of Dan O'Connor in support of Plaintiff's Reply to Motion for Partial Summary
23 Judgment.
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1	Obj. No.	Statement	Location	Objection	Ruling
2	1.	“When new drivers	2:16-18	Lacks personal	<input type="checkbox"/> Sustained
3		were hired, I	¶4	knowledge, FRE 602.	<input checked="" type="checkbox"/> Overruled
4		explained to them		Compare Paragraph 7,	
5		that Air Products		stating that Air Products,	
6		controlled		not the Declarant,	
7		dispatching, that		controlled the	
8		some of the legs that		dispatching of legs and	
9		were dispatched were		provided dispatch	
10		out-of-state legs, and		instructions directly to	
11		that the drivers may		the drivers without the	
12		be required to haul an		Declarant being part of	
13		out-of-state leg.”		the process.	
14	2.	“ . . . all of the Santa	3:4-5	Lacks personal	<input checked="" type="checkbox"/> Sustained
15		Clara Drivers were	¶6	knowledge, FRE 602.	<input type="checkbox"/> Overruled
16		eligible for and		Compare Paragraph 7,	
17		subject to being		stating that Air Products,	
18		dispatched on out-of-		not the Declarant,	
19		state deliveries. “		controlled the	
20				dispatching of legs and	
21				provided dispatch	
22				instructions directly to	
23				the drivers without the	
24				Declarant being part of	
25				the process.	
26	3.	“ . . . I and other	3:27-4:2	Lacks personal	<input type="checkbox"/> Sustained
27		individuals at Trimac	¶10	knowledge, FRE 602.	<input checked="" type="checkbox"/> Overruled
28		were asked to analyze		These amorphous “other	
		the "TMW"		individuals” performed	
		information for all of		some or all of the	
		the legs that were		analysis. However, the	
		dispatched out of the		Declarant lacks personal	
		Santa Clara Branch. “		knowledge regarding the	
				analysis performed by	
				these other individuals	
				located at Trimac, and	
				the methods of	
				calculation are not	
				explained.	

1			Hearsay, FRE 802. To the extent that the Declarant is attempting to introduce into evidence the contents of these "TMW" reports, the contents are hearsay.	<input checked="" type="checkbox"/> Sustained
2				<input type="checkbox"/> Overruled
3				
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6			Calls for expert testimony, FRE 701.	
7			This declaration is based on statistical analysis,	<input type="checkbox"/> Sustained
8			but the Declarant has not been qualified under FRE 702 as an expert in statistical analysis.	<input checked="" type="checkbox"/> Overruled
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11	4.	"To determine the total number of Santa Clara Drivers that were dispatched on an out-	4:8-15	<input checked="" type="checkbox"/> Sustained
12		of-state leg from 2008 to 2010 for the Summary, we sorted the TMW	¶11	<input type="checkbox"/> Overruled
13		information relating to the Santa Clara Drivers to identify any of the following		
14		three categories of legs: (1) legs that originated in California with an		
15		out-of-state destination, (2) legs that originated out-of-state with a		
16		California destination, and (3) legs that originated out-of-state with an		
17		out-of-state destination. Once these legs were identified, we simply		
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22			Hearsay, FRE 802. To the extent that the Declarant is attempting to introduce into evidence the contents of these "TMW" reports, the contents are hearsay.	SUSTAINED
23				
24				
25				
26			Calls for expert testimony, FRE 701.	
27			This declaration is based on statistical analysis,	OVERRULED
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1		counted the number of individual drivers that were identified on these out-of-state loads and divided that number by the total number of Santa Clara Drivers, 25, to arrive at a percentage."		but the Declarant has not been qualified under FRE 702 as an expert in statistical analysis.	
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7	5.	"To determine the percentage of total legs that were out-of-state legs in 2008, 2009, and 2010 for the Summary, we simply analyzed the TMW information that was already sorted to identify the out-of-state legs. For each year, we determined the total number of out-of-state legs, the total number of all legs, and divided the out-of-state legs by the total legs to arrive at a percentage."	4:16-19 ¶12	Lacks personal knowledge, FRE 602. These amorphous "other individuals" performed some or all of the analysis. However, the Declarant lacks personal knowledge regarding the analysis performed by these other individuals located at Trimac, and the methods of calculation are not explained. Hearsay, FRE 802. To the extent that the Declarant is attempting to introduce into evidence the contents of these "TMW" reports, the contents are hearsay. Calls for expert testimony, FRE 701. This declaration is based on statistical analysis, but the Declarant has not been qualified under FRE 702 as an expert in statistical analysis.	<input checked="" type="checkbox"/> Sustained <input type="checkbox"/> Overruled SUSTAINED OVERRULED
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26	6.	"To determine the percentage of total miles that were driven on out-of-state	4:20-5:2 ¶13	Lacks personal knowledge, FRE 602. These amorphous "other individuals" performed	<input checked="" type="checkbox"/> Sustained <input type="checkbox"/> Overruled
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1	legs in 2008, 2009,		some or all of the	
2	and 2010 for the		analysis. However, the	
3	Summary, we first		Declarant lacks personal	
4	had to filter out some		knowledge regarding the	
5	of the legs on which		analysis performed by	
6	more than one Santa		these other individuals	
7	Clara Driver was		located at Trimac, and	
8	dispatched by Air		the methods of	
9	Products. This		calculation are not	
10	occurred when a team		explained.	
11	operation was			
12	dispatched on the leg.			
13	Because both drivers		Hearsay, FRE 802. To	SUSTAINED
14	were dispatched on		the extent that the	
15	the leg, the mileage		Declarant is attempting	
16	information reported		to introduce into	
17	the total number of		evidence the contents of	
18	miles on the leg for		these "TMW" reports,	
19	each of them. Where		the contents are hearsay.	
20	a leg number			
21	appeared more than			
22	once in the		Calls for expert	
23	information, we only		testimony, FRE 701.	OVERRULED
24	counted the mileage		This declaration is based	
25	for that leg number		on statistical analysis,	
26	once. After we		but the Declarant has not	
27	filtered the		been qualified under	
28	information, we		FRE 702 as an expert in	
	calculated the total		statistical analysis.	
	number of miles for			
	all legs for each year.			
	We then sorted the			
	information to			
	identify the out-of-			
	state legs for each			
	year in the same			
	manner discussed			
	above. We then			
	calculated the total			
	number of miles on			
	the out-of-state legs			
	for each year and			
	divided by the total			
	number of miles on			
	all legs for each year			

1		to arrive at a percentage."			<input checked="" type="checkbox"/> Sustained
2	7.	"... he was eligible to be dispatched on any Air Products' leg, and was subject to being dispatched by Air Products on an interstate leg."	5:7-9 ¶14	Lacks personal knowledge, FRE 602. Compare Paragraph 7, stating that Air Products, not the Declarant, controlled the dispatching of legs and provided dispatch instructions directly to the drivers without the Declarant being part of the process.	<input checked="" type="checkbox"/> Sustained <input type="checkbox"/> Overruled
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9	8.	When he was first employed, Roberts was dispatched on a leg from Santa Clara, California, to Oregon.	5:5-6 ¶14	Lacks personal knowledge, FRE 602. Relevance. The statute of limitations on all claims in this matter would cut off any claims for the period when Roberts was first employed.	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled <input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled
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DATED: March 12, 2013

LAW OFFICES OF MICHAEL TRACY

/s/ Megan E. Ross

By:

MEGAN E. ROSS Attorney for Plaintiff
Douglas Roberts

IT IS SO ORDERED:

HOWARD R. LLOYD
U.S. MAGISTRATE JUDGE

DATE: 9/30/13

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10 Attorneys for Plaintiff Douglas Roberts

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **SAN JOSE DIVISION**

14 DOUGLAS ROBERTS, AN INDIVIDUAL;

15 Plaintiff,

16 vs.

17 TRIMAC TRANSPORTATION SERVICES
18 (WESTERN), INC., A DELAWARE
19 CORPORATION; ,

20 Defendant.

Case No.: 5:12-cv-05302-HRL

**COURT RULINGS RE
PLAINTIFF'S OBJECTIONS TO
DECLARATION OF VICENT G.
CLARK USED IN SUPPORT OF
DEFENDANT'S SUPPLEMENTAL
OPPOSITION TO MOTION OF
PARTIAL SUMMARY JUDGMENT**

(RE: DOCKET NO. 44-5)

21 PLAINTIFF DOUGLAS ROBERTS objects to the Declaration of VICENT G.
22 CLARK used in support of Defendant's Supplemental Opposition to Motion for Partial
23 Summary Judgment.
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Obj. No.	Statement	Location	Objection	Ruling
2.	"The purification process does not change the essential character of the argon. The product is 97% argon when it begins the process, and it is 99.99% argon when it is delivered to the customer."	2:19-21 ¶5	Legal conclusion. FRE 602. Calls for expert testimony, FRE 701. This declaration is based on chemical process and statistically analysis of such processing, but the Declarant has not been qualified under FRE 702 as an expert.	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled OVERRULED

DATED: May 14, 2013

LAW OFFICES OF MICHAEL TRACY

/s/ Megan E. Ross

By:

MEGAN E. ROSS Attorney for Plaintiff
Douglas Roberts

IT IS SO ORDERED:

HOWARD R. LLOYD
U.S. MAGISTRATE JUDGE

DATE: 9/30/13

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Attorneys for Plaintiff Douglas Roberts

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SAN JOSE DIVISION

DOUGLAS ROBERTS, AN INDIVIDUAL;

Plaintiff,

vs.

TRIMAC TRANSPORTATION SERVICES
(WESTERN), INC., A DELAWARE
CORPORATION; ,

Defendant.

Case No.: 5:12-cv-05302-HRL

**COURT RULINGS RE
PLAINTIFF'S OBJECTIONS TO
DECLARATION OF KEVIN
DECELLES USED IN SUPPORT OF
DEFENDANT'S SUPPLEMENTAL
OPPOSITION TO MOTION OF
PARTIAL SUMMARY JUDGMENT**

(RE: Docket No. 46-6)

PLAINTIFF DOUGLAS ROBERTS objects to the Declaration of KEVIN
DECELLES used in support of Defendant's Supplemental Opposition to Motion for Partial
Summary Judgment.

Obj. No.	Statement	Location	Objection	Ruling
1.	"I have reviewed the documents attached to this declaration as <i>Exhibits 1, 2, and 3</i> and compared them with the spreadsheet I created when I ran the queries. <i>Exhibit 1</i> is a true and accurate copy of the 2008 TMW information tab in the spreadsheet I created when I ran the query of the TMW database. <i>Exhibit 2</i> is a true and accurate copy of the 2009 TMW information tab in the spreadsheet I created when I ran the query of the TMW database. <i>Exhibit 3</i> is a true and accurate copy of the 2010 TMW information tab in the spreadsheet I created when I ran the query of the TMW database. The columns in the exhibits show the TMW system information for, among other things, the leg number, total miles, driver, branch, start date, origin state, leg completion date, destination state, and the commodity transported. The data	3:19-26 4:1-3 ¶7	Hearsay, FRE 802. To the extent that the Declarant is attempting to introduce into evidence the contents of these "TMW" reports, the contents are hearsay. Calls for expert testimony, FRE 701. This declaration is based on statistical analysis, but the Declarant has not been qualified under FRE 702 as an expert in statistical analysis.	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled <input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled

1		in these exhibits is the same data that			
2		was inputted into the TMW system. The			
3		only difference is the format. Trimac			
4		personnel regularly run reports similar to			
5		these 3 exhibits in the normal course of			
6		business.”			
7					
8	2.	“In preparing to provide this	4:4-25	Hearsay, FRE 802. To the extent that the	<u> </u> Sustained
9		Declaration, I was asked to analyze the	5:1-3	Declarant is attempting to introduce into	<u>✓</u> Overruled
10		information provided in <i>Exhibits</i> 1-3	¶8	evidence the contents of these “TMW” reports,	
11		related to the legs dispatched to the		the contents are hearsay.	
12		following drivers:			
13		Randall Banks,		Calls for expert testimony, FRE 701.	<u> </u> Sustained
14		Martin Baudoin,		This declaration is based on statistical analysis,	<u>✓</u> Overruled
15		Michael Brogdon,		but the Declarant has not been qualified under	
16		Kerry Bushnell, Cary Carandang, Victor		FRE 702 as an expert in statistical analysis.	
17		Cunningham,			
18		Thomas Darnell,			
19		Anthony Davis,			
20		Randal Gorshe,			
21		Raymond Greene,			
22		Robert Hass,			
23		Christopher Larsen,			
24		Michael Magee, Oleg Marchenko, Leo			
25		Mueller, Michael Myers, Robert			
26		Penicks, Ronald Phillips, Leland Pike,			
27		Douglas Roberts, George Sabilino,			
28		David Surgick, Rocky Torrecillas,			
		Jason Vieth, and Christopher Wilks			
		(the “Santa Clara			

1	Drivers").			
2	Specifically, I was			
3	asked to identify the			
4	following:			
5	a. The total number			
6	of Santa Clara			
7	Drivers dispatched on			
8	legs that were (1)			
9	from CA to another			
10	state, (2) between			
11	two non-CA states,			
12	and (3) from another			
13	state to CA ("out-of-			
14	state legs").			
15	b. The total number			
16	of Santa Clara			
17	Drivers dispatched on			
18	local California			
19	deliveries			
20	of argon in California			
21	from 2008-2010.			
22	c. The total number			
23	of legs dispatched to			
24	the Santa Clara			
25	Drivers in 2008,			
26	2009, and			
27	2010.			
28	d. The total number			
	of out-of-state legs			
	dispatched to the			
	Santa Clara Drivers			
	for 2008,2009,2010.			
	e. The total number			
	of legs of argon			
	dispatched to the			
	Santa Clara Drivers			
	for local delivery in			
	California in 2008,			
	2009, and 2010.			

1	f. The total miles driven on all legs dispatched to the Santa Clara Drivers in 2008, 2009, 2010.			
2				
3				
4	g. The total miles driven on all legs dispatched to the Santa Clara Drivers on out-of-state legs in 2008, 2009, 2010.			
5				
6				
7				
8				
9	h. The total number of miles driven on the legs of argon dispatched to the Santa Clara Drivers for local delivery in California in 2008, 2009, and 2010.			
10				
11				
12				
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14				
15	i. A list of the products that were hauled on out-of-state legs during 2008 and 2010."			
16				
17				
18	3. "A summary of my analysis of the information contained in <i>Exhibit</i> 1-3 is attached to this declaration as <i>Exhibit</i> 4 (the "Summary"). <i>Exhibit</i> 4 contains three tables. The first table is titled "Summary of Santa Clara Drivers from 2008-2010." The second column of the first table shows the total number of Santa Clara Drivers	5:11-21 ¶10	Lacks personal knowledge, FRE 602. Hearsay, FRE 802. To the extent that the Declarant is attempting to introduce into evidence the contents of these "TMW" reports, the contents are hearsay. Calls for expert testimony, FRE 701. This declaration is based on statistical analysis, but the Declarant has not been qualified under	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled OVERRULED <input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled
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1		dispatched on either an out-of-state leg or local argon leg. This number was derived from combining the list of 20 Santa Clara Drivers that hauled a local argon leg and the 16 Santa Clara Drivers that hauled an out-of-state leg. The third column shows the percentage of Santa Clara Drivers who hauled those legs by dividing the number in the second column by 25, the number of Santa Clara Drivers. The fourth column shows the total number of Santa Clara Drivers who were dispatched on out-of-state legs. The fifth column shows the percentage of Santa Clara Drivers who hauled those legs by dividing the number in the second column by 25, the number of Santa Clara Drivers."		FRE 702 as an expert in statistical analysis.	
23	4.	The second table in the Summary is titled "Summary of Interstate Legs from 2008-2010." The second column of the table shows the total number of legs dispatched to Santa Clara Drivers in	5:22-26 6:1-8 ¶11	Lacks personal knowledge, FRE 602. Hearsay, FRE 802. To the extent that the Declarant is attempting to introduce into evidence the contents of these "TMW" reports, the contents are hearsay.	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled OVERRULED <input type="checkbox"/> Sustained

1	2008, 2009, and			✓ Overruled
2	2010. Legs that were		Calls for expert	
3	dispatched to more		testimony, FRE 701.	
4	than one driver to		This declaration is based	
5	complete were		on statistical analysis,	
6	counted twice. The		but the Declarant has not	
7	third column of the		been qualified under	
8	table shows the total		FRE 702 as an expert in	
9	number of out-of-		statistical analysis.	
10	state legs and local			
11	argon legs that were			
12	dispatched in 2008,			
13	2009, and 2010. The			
14	fourth column of the			
15	table shows the			
16	percentage of			
17	interstate legs			
18	compared to the total			
19	number of legs by			
20	dividing the number			
21	of legs in the third			
22	column by the			
23	number of legs in			
24	second column. The			
25	fifth column of the			
26	table shows total			
27	number of miles			
28	driven on all of the			
	legs dispatched in			
	2008, 2009, and			
	2010. The sixth			
	column of the table			
	shows the number of			
	miles on out-of-state			
	legs and local argon			
	legs. For the fifth and			
	sixth columns, the			
	miles related to legs			
	that were dispatched			
	to more than one			
	driver were only			
	counted once.			
	Finally, the seventh			
	column shows the			
	percentage of			

1		interstate miles driven by the Santa Clara Drivers by dividing the number of miles in the sixth column by the number of miles in the fifth column.			
2					
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6	5.	The third table in the Summary is titled "Summary of Out-of-State Legs from 2008-2010." The second column of the table shows the total number of legs dispatched to Santa Clara Drivers in 2008, 2009, and 2010. Legs that were dispatched to more than one driver to complete were counted twice. The third column of the table shows the total number of out-of-state legs that were dispatched in 2008, 2009, and 2010. The fourth column of the table shows the percentage of out-of-state legs compared to the total number of legs by dividing the number of legs in the third column by the number of legs in second column. The fifth column of the table shows total number of miles driven on all of the legs dispatched in	6:9-20 ¶12	Lacks personal knowledge, FRE 602. Hearsay, FRE 802. To the extent that the Declarant is attempting to introduce into evidence the contents of these "TMW" reports, the contents are hearsay. Calls for expert testimony, FRE 701. This declaration is based on statistical analysis, but the Declarant has not been qualified under FRE 702 as an expert in statistical analysis.	<u> </u> Sustained <u> ✓ </u> Overruled OVERRULED <u> </u> Sustained <u> ✓ </u> Overruled
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1	2008, 2009, and 2010.			
2	The sixth column of			
3	the table shows the			
4	number of miles on			
5	out-of-state legs. For			
6	the fifth and sixth			
7	columns, the miles			
8	related to legs			
9	dispatched to more			
10	than one driver were			
11	only counted once.			
12	Finally, the seventh			
13	column shows the			
14	percentage of out-of-			
15	state miles driven by			
16	the Santa Clara			
17	Drivers by dividing			
18	the number of miles			
19	in the sixth column			
20	by the number of			
21	miles in the fifth			
22	column.			
23	6. The following	6:21-22	Lacks personal	SUSTAINED
24	products were hauled	¶13	knowledge, FRE 602.	
25	on out-of-state legs			
26	from 2008 to 2010:			
27	Argon, Nitrogen,			
28	Oxygen, Hydrogen			
	Liquid Cryogenic,			
	Helium, Helium			
	Gaseous.			

DATED: May 14, 2013

LAW OFFICES OF MICHAEL TRACY

/s/ Megan E. Ross

IT IS SO ORDERED:

By:

MEGAN E. ROSS Attorney for Plaintiff
Douglas RobertsHOWARD R. LLOYD
U.S. MAGISTRATE JUDGE

DATE: 9/30/13

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Attorneys for Plaintiff Douglas Roberts

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DOUGLAS ROBERTS, AN INDIVIDUAL;

Plaintiff,

vs.

TRIMAC TRANSPORTATION SERVICES
(WESTERN), INC., A DELAWARE
CORPORATION; ,

Defendant.

Case No.: 5:12-cv-05302-HRL

**COURT RUNGS RE
PLAINTIFF'S OBJECTIONS TO
DECLARATION OF JANE DELISI
USED IN SUPPORT OF DEFENDANT'S
SUPPLEMENTAL OPPOSITION TO
MOTION OF PARTIAL SUMMARY
JUDGMENT**

(RE: DOCKET NO. 46-7)

PLAINTIFF DOUGLAS ROBERTS objects to the Declaration of JANE DELISI
used in support of Defendant's Supplemental Opposition to Motion for Partial Summary
Judgment.

Obj. No.	Title	Location	Objection	Ruling
1.	Declaration of Jane Delisi in Support of Defendant's Opposition to Plaintiff's Motion for Partial Summary Judgment	Document #43-9	Failure to disclose the witness pursuant to Rule 26(a)(1).	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled

DATED: May 14, 2013

LAW OFFICES OF MICHAEL TRACY

/s/ Megan E. Ross

By:

MEGAN E. ROSS Attorney for Plaintiff
Douglas Roberts

IT IS SO ORDERED:

HOWARD R. LLOYD
U.S. MAGISTRATE JUDGE

DATE: 9/30/13

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Attorneys for Plaintiff Douglas Roberts

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SAN JOSE DIVISION

DOUGLAS ROBERTS, AN INDIVIDUAL;

Plaintiff,

vs.

TRIMAC TRANSPORTATION SERVICES
(WESTERN), INC., A DELAWARE
CORPORATION; ,

Defendant.

Case No.: 5:12-cv-05302-HRL

**COURT RULINGS RE
PLAINTIFF'S OBJECTIONS TO
DECLARATION OF VICENT G.
CLARK USED IN SUPPORT OF
DEFENDANT'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

(RE: DOCKET No. 47-1)

PLAINTIFF DOUGLAS ROBERTS objects to the Declaration of VICENT G.
CLARK used in support of Defendant's Motion for Partial Summary Judgment (Document
#44-2).

Obj. No.	Statement	Location	Objection	Ruling
1.	"The purification process does not change the essential character of the argon. The product is 97% argon when it begins the process, and it is 99.99% argon when it is delivered to the customer."	2:19-21 ¶5	Legal conclusion. FRE 602. Calls for expert testimony, FRE 701. This declaration is based on chemical process and statistically analysis of such processing, but the Declarant has not been qualified under FRE 702 as an expert.	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled OVERRULED

DATED: May 21, 2013

LAW OFFICES OF MICHAEL TRACY

/s/ Megan E. Ross

By:

MEGAN E. ROSS Attorney for Plaintiff
Douglas Roberts

IT IS SO ORDERED:

HOWARD R. LLOYD
U.S. MAGISTRATE JUDGE

DATE: 9/30/13

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10 Attorneys for Plaintiff Douglas Roberts

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **SAN JOSE DIVISION**

14 DOUGLAS ROBERTS, AN INDIVIDUAL;

15 Plaintiff,

16 vs.

17 TRIMAC TRANSPORTATION SERVICES
18 (WESTERN), INC., A DELAWARE
19 CORPORATION; ,

20 Defendant.

Case No.: 5:12-cv-05302-HRL

**COURT RULINGS RE
PLAINTIFF'S OBJECTIONS TO
DECLARATION OF KEVIN
DECELLES USED IN SUPPORT OF
DEFENDANT'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

(RE: DOCKET NO. 47-2)

21 PLAINTIFF DOUGLAS ROBERTS objects to the Declaration of KEVIN
22 DECELLES used in support of Defendant's Motion for Partial Summary Judgment
23 (Document #44-8).
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Obj. No.	Statement	Location	Objection	Ruling
1.	<p>"I have reviewed the documents attached to this declaration as <i>Exhibits 1, 2, and 3</i> and compared them with the spreadsheet I created when I ran the queries. <i>Exhibit 1</i> is a true and accurate copy of the 2008 TMW information tab in the spreadsheet I created when I ran the query of the TMW database. <i>Exhibit 2</i> is a true and accurate copy of the 2009 TMW information tab in the spreadsheet I created when I ran the query of the TMW database. <i>Exhibit 3</i> is a true and accurate copy of the 2010 TMW information tab in the spreadsheet I created when I ran the query of the TMW database. The columns in the exhibits show the TMW system information for, among other things, the leg number, total miles, driver, branch, start date, origin state, leg completion date, destination state, and the commodity transported. The data</p>	<p>3:19-26</p> <p>4:1-3</p> <p>¶7</p>	<p>Hearsay, FRE 802. To the extent that the Declarant is attempting to introduce into evidence the contents of these "TMW" reports, the contents are hearsay.</p> <p>Calls for expert testimony, FRE 701. This declaration is based on statistical analysis, but the Declarant has not been qualified under FRE 702 as an expert in statistical analysis.</p>	<p><u> </u> Sustained</p> <p><u>✓</u> Overruled</p> <p><u> </u> Sustained</p> <p><u>✓</u> Overruled</p>

1		in these exhibits is the same data that was inputted into the TMW system. The only difference is the format. Trimac personnel regularly run reports similar to these 3 exhibits in the normal course of business."			
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8	2.	"In preparing to provide this Declaration, I was asked to analyze the information provided in <i>Exhibits</i> 1-3 related to the legs dispatched to the following drivers: Randall Banks, Martin Baudoin, Michael Brogdon, Kerry Bushnell, Cary Carandang, Victor Cunningham, Thomas Darnell, Anthony Davis, Randal Gorshe, Raymond Greene, Robert Hass, Christopher Larsen, Michael Magee, Oleg Marchenko, Leo Mueller, Michael Myers, Robert Penicks, Ronald Phillips, Leland Pike, Douglas Roberts, George Sabilino, David Surgick, Rocky Torrecillas, Jason Vieth, and Christopher Wilks (the "Santa Clara	4:4-25 5:1-3 ¶8	Hearsay, FRE 802. To the extent that the Declarant is attempting to introduce into evidence the contents of these "TMW" reports, the contents are hearsay. Calls for expert testimony, FRE 701. This declaration is based on statistical analysis, but the Declarant has not been qualified under FRE 702 as an expert in statistical analysis.	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled <input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled
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1	Drivers").			
2	Specifically, I was			
3	asked to identify the			
4	following:			
5	a. The total number			
6	of Santa Clara			
7	Drivers dispatched on			
8	legs that were (1)			
9	from CA to another			
10	state, (2) between			
11	two non-CA states,			
12	and (3) from another			
13	state to CA ("out-of-			
14	state legs").			
15	b. The total number			
16	of Santa Clara			
17	Drivers dispatched on			
18	local California			
19	deliveries			
20	of argon in California			
21	from 2008-2010.			
22	c. The total number			
23	of legs dispatched to			
24	the Santa Clara			
25	Drivers in 2008,			
26	2009, and			
27	2010.			
28	d. The total number			
	of out-of-state legs			
	dispatched to the			
	Santa Clara Drivers			
	for 2008,2009,2010.			
	e. The total number			
	of legs of argon			
	dispatched to the			
	Santa Clara Drivers			
	for local delivery in			
	California in 2008,			
	2009, and 2010.			

1	f. The total miles driven on all legs dispatched to the Santa Clara Drivers in 2008, 2009, 2010.			
2				
3				
4	g. The total miles driven on all legs dispatched to the Santa Clara Drivers on out-of-state legs in 2008, 2009, 2010.			
5				
6				
7				
8				
9	h. The total number of miles driven on the legs of argon dispatched to the Santa Clara Drivers for local delivery in California in 2008, 2009, and 2010.			
10				
11				
12				
13				
14				
15	i. A list of the products that were hauled on out-of-state legs during 2008 and 2010."			
16				
17				
18	3. "A summary of my analysis of the information contained in <i>Exhibit</i> 1-3 is attached to this declaration as <i>Exhibit</i> 4 (the "Summary"). <i>Exhibit</i> 4 contains three tables. The first table is titled "Summary of Santa Clara Drivers from 2008-2010." The second column of the first table shows the total number of Santa Clara Drivers	5:11-21 ¶10	Lacks personal knowledge, FRE 602. Hearsay, FRE 802. To the extent that the Declarant is attempting to introduce into evidence the contents of these "TMW" reports, the contents are hearsay. Calls for expert testimony, FRE 701. This declaration is based on statistical analysis, but the Declarant has not been qualified under	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled OVERRULED <input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled
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1		dispatched on either an out-of-state leg or local argon leg. This number was derived from combining the list of 20 Santa Clara Drivers that hauled a local argon leg and the 16 Santa Clara Drivers that hauled an out-of-state leg. The third column shows the percentage of Santa Clara Drivers who hauled those legs by dividing the number in the second column by 25, the number of Santa Clara Drivers. The fourth column shows the total number of Santa Clara Drivers who were dispatched on out-of-state legs. The fifth column shows the percentage of Santa Clara Drivers who hauled those legs by dividing the number in the second column by 25, the number of Santa Clara Drivers."		FRE 702 as an expert in statistical analysis.	
23	4.	"The second table in the Summary is titled "Summary of Interstate Legs from 2008-2010." The second column of the table shows the total number of legs dispatched to Santa Clara Drivers in	5:22-26 6:1-8 ¶11	Lacks personal knowledge, FRE 602. Hearsay, FRE 802. To the extent that the Declarant is attempting to introduce into evidence the contents of these "TMW" reports, the contents are hearsay.	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled OVERRULED <input type="checkbox"/> Sustained

1	2008, 2009, and		Calls for expert	✓ Overruled
2	2010. Legs that were		testimony, FRE 701.	
3	dispatched to more		This declaration is based	
4	than one driver to		on statistical analysis,	
5	complete were		but the Declarant has not	
6	counted twice. The		been qualified under	
7	third column of the		FRE 702 as an expert in	
8	table shows the total		statistical analysis.	
9	number of out-of-			
10	state legs and local			
11	argon legs that were			
12	dispatched in 2008,			
13	2009, and 2010. The			
14	fourth column of the			
15	table shows the			
16	percentage of			
17	interstate legs			
18	compared to the total			
19	number of legs by			
20	dividing the number			
21	of legs in the third			
22	column by the			
23	number of legs in			
24	second column. The			
25	fifth column of the			
26	table shows total			
27	number of miles			
28	driven on all of the			
	legs dispatched in			
	2008, 2009, and			
	2010. The sixth			
	column of the table			
	shows the number of			
	miles on out-of-state			
	legs and local argon			
	legs. For the fifth and			
	sixth columns, the			
	miles related to legs			
	that were dispatched			
	to more than one			
	driver were only			
	counted once.			
	Finally, the seventh			
	column shows the			
	percentage of			

1		interstate miles driven by the Santa Clara Drivers by dividing the number of miles in the sixth column by the number of miles in the fifth column."			
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6	5.	"The third table in the Summary is titled "Summary of Out-of- State Legs from 2008-2010." The second column of the table shows the total number of legs dispatched to Santa Clara Drivers in 2008, 2009, and 2010. Legs that were dispatched to more than one driver to complete were counted twice. The third column of the table shows the total number of out-of- state legs that were dispatched in 2008, 2009, and 2010. The fourth column of the table shows the percentage of out-of- state legs compared to the total number of legs by dividing the number of legs in the third column by the number of legs in second column. The fifth column of the table shows total number of miles driven on all of the legs dispatched in	6:9-20 ¶12	Lacks personal knowledge, FRE 602. Hearsay, FRE 802. To the extent that the Declarant is attempting to introduce into evidence the contents of these "TMW" reports, the contents are hearsay. Calls for expert testimony, FRE 701. This declaration is based on statistical analysis, but the Declarant has not been qualified under FRE 702 as an expert in statistical analysis.	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled OVERRULED <input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled
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1		2008, 2009, and 2010.			
2		The sixth column of			
3		the table shows the			
4		number of miles on			
5		out-of-state legs. For			
6		the fifth and sixth			
7		columns, the miles			
8		related to legs			
9		dispatched to more			
10		than one driver were			
11		only counted once.			
12		Finally, the seventh			
13		column shows the			
14		percentage of out-of-			
15		state miles driven by			
16		the Santa Clara			
17		Drivers by dividing			
18		the number of miles			
19		in the sixth column			
20		by the number of			
21		miles in the fifth			
22		column."			
23	6.	"The following	6:21-22	Lacks personal	SUSTAINED
24		products were hauled	¶13	knowledge, FRE 602.	
25		on out-of-state legs			
26		from 2008 to 2010:			
27		Argon, Nitrogen,			
28		Oxygen, Hydrogen			
		Liquid Cryogenic,			
		Helium, Helium			
		Gaseous."			

DATED: May 21, 2013

LAW OFFICES OF MICHAEL TRACY

/s/ Megan E. Ross

IT IS SO ORDERED:

By


 HOWARD R. LLOYD
 U.S. MAGISTRATE JUDGE
MEGAN E. ROSS Attorney for Plaintiff
Douglas Roberts

DATE: 9/30/13

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Attorneys for Plaintiff Douglas Roberts

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

DOUGLAS ROBERTS, AN INDIVIDUAL;

Plaintiff,

vs.

TRIMAC TRANSPORTATION SERVICES
(WESTERN), INC., A DELAWARE
CORPORATION; ,

Defendant.

Case No.: 5:12-cv-05302-HRL

**COURT RULINGS RE
PLAINTIFF'S OBJECTIONS TO
DECLARATION OF JANE DELISI
USED IN SUPPORT OF DEFENDANT'S
MOTION OF PARTIAL SUMMARY
JUDGMENT**

(RE: DOCKET No. 47-3)

PLAINTIFF DOUGLAS ROBERTS objects to the Declaration of JANE DELISI
used in support of Defendant's Motion for Partial Summary Judgment.

Obj. No.	Title	Location	Objection	Ruling
1.	Declaration of Jane Delisi in Support of Defendant's Opposition to Plaintiff's Motion for Partial Summary Judgment	Document #44-9	Failure to disclose the witness pursuant to Rule 26(a)(1).	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled

DATED: May 21, 2013

LAW OFFICES OF MICHAEL TRACY

/s/ Megan E. Ross

By:

MEGAN E. ROSS Attorney for Plaintiff
Douglas Roberts

IT IS SO ORDERED:

HOWARD B. LLOYD
U.S. MAGISTRATE JUDGE

DATE: 9/30/13